

March 5, 1999

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION
**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE EMILY LOUISE JANES,
formerly known as Emily Louise
Snyder,

Debtor.

BAP No. KS-98-060

DENNIS SNYDER,

Plaintiff-Appellant,

v.

EMILY LOUISE JANES,

Defendant-Appellee.

Bankr. No. 95-20041
Adv. No. 95-6056
Chapter 7

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Kansas

Before McFEELEY, Chief Judge, BOHANON, and MATHESON, Bankruptcy
Judges.

BOHANON, Bankruptcy Judge.

After examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal, and therefore grants the appellant-plaintiff's request for a decision on the briefs without oral argument. See Fed. R. Bankr. P. 8012; 10th Cir. BAP L.R. 8012-1(a). The case is therefore submitted without oral argument.

The record on this appeal is minimal. The appellant-plaintiff has submitted

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

only a Notice of Commencement of Case, a Discharge of Debtor, a Motion to Abandon Less Than All Assets, and the Order granting that motion.¹ No record whatsoever concerning the adversary proceeding appealed from is provided. Thus, it is extremely difficult to construct the history and context of these issues on appeal.

It appears that the appellant-plaintiff sued the appellee-debtor, seeking to except his debt from discharge under 11 U.S.C. § 523. The bankruptcy court conducted a routine scheduling conference and the plaintiff was directed to accomplish certain tasks, including the preparation of a scheduling order. When the plaintiff failed to comply, the court served a conditional order of dismissal, giving the plaintiff ten days to show cause why the complaint should not be dismissed for lack of prosecution. The complaint was dismissed when the plaintiff again failed to comply. This appeal resulted.

The background of this matter is obscure. For example, appellant's brief states that an adversary proceeding requesting this relief was filed not only in connection with this case, but also in the appellant's bankruptcy case. However, no record of this fact is presented, nor is there any record of any other adversary proceeding. Potentially, this issue could have a significant effect in the determination of this appeal.

The appellant-plaintiff claims that the dismissal of the adversary proceeding in this case was erroneous for two reasons. First, it appears that he claims that dismissal of his adversary proceeding in the appellee's case constituted a violation of the automatic stay under 11 U.S.C. § 362 because the property in question was still part of the bankruptcy estate in the appellant's case. His brief does not clearly state the issue. Second, it appears that he claims that

¹ These four documents were from the appellant-plaintiff's own bankruptcy case and not from this bankruptcy case. The appellant-plaintiff did not submit any record from this bankruptcy case.

the trustee of his own bankruptcy case was the "real party in interest" and, because the trustee of his own bankruptcy case was not notified of the dismissal of the adversary proceeding in this bankruptcy case, the bankruptcy court in this case abused its discretion. Again, the issue is not entirely clear as set forth in the brief.

Even assuming that this interpretation of the issues is accurate, the record is not sufficiently complete for an evaluation of this matter and the issues which seem to have been raised. It appears that this appeal involves, to some degree, two different bankruptcy cases. Yet, the appellant-plaintiff has only filed a record of four documents from one of them and none from this case nor any from the adversary proceeding from which he appeals.

The parties are responsible for filing a sufficient record for the consideration and determination of the issues on appeal. 10th Cir. BAP L.R. 8009-1. In this case, the record provided by the appellant-plaintiff is completely inadequate.

As a general rule, the failure to file a sufficient record to permit the appellate court to evaluate the issues on appeal warrants an affirmance of the trial court. In re Rambo, 209 B.R. 527, 530 (10th Cir. BAP 1997), aff'd without opinion, Johnson v. Rambo (In re Rambo), 132 F.3d 43 (10th Cir. 1997).

Accordingly, the order of the bankruptcy court is AFFIRMED.